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March 14, 2002

BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 20002

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MAR 14 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Amendment of Section 73.606(b),
Table of Allotments, TV Broadcast Stations
(Green Bay, Wisconsin)
MM Docket No. 01-325/RM-10136


Dear Mr. Caton:

Transmitted herewith on behalf of Green Bay 44, L.L.C. are an original and four copies of its "Reply to Comments in Support of Informal Opposition" filed in the above-referenced allotment proceeding.

Should any questions arise concerning this matter, please communicate directly with the undersigned.

Very truly yours,

DICKSTEIN SHAPIRO MORIN
& OSHINSKY LLP



Andrew S. Kersting
Counsel for
Green Bay 44, L.L.C.

Enclosure

cc: Certificate of Service (w/ encl.)

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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MAR 14 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.606(b),
Table of Allotments,
Television Broadcast Stations,
(Green Bay, Wisconsin)

MM Docket No. 01-325
RM-10136

To: Chief, Video Services Division

**REPLY TO COMMENTS
IN SUPPORT OF INFORMAL OPPOSITION**

Green Bay 44, L.L.C. ("Green Bay 44"), by counsel, hereby submits its reply to the "Comments in Support of Informal Opposition," filed March 5, 2002 ("Comments"), in the above-captioned proceeding by WPBN/WTOM License Subsidiary, Inc. ("WPBN"), licensee of Station WPBN-DT, Channel 50, Traverse City, Michigan.¹ In support of this reply, the following is stated:

I. WPBN's Comments Should Be Dismissed.

The *Notice of Proposed Rule Making*, DA 01-2753 (released November 30, 2001) ("*NPRM*"), in this proceeding announced comment and reply comment deadlines of January 21 and February 5, 2002, respectively. On March 5, 2002 – over six (6) weeks after the comment deadline and a full month after the deadline for filing reply comments – WPBN filed its Comments in which it expressed concern that the proposed allotment of

¹ WPBN's Comments were filed in this proceeding in support of an "Informal Opposition" filed February 15, 2002, by Television Wisconsin, Inc. ("WISC"), licensee of Station WISC-DT, Channel 50, Madison, Wisconsin. Green Bay 44 filed a reply to WISC's Informal Opposition on March 7, 2002.

Channel 50 at Green Bay “could result in impermissible new interference to WPBN-DT’s co-channel DTV operations in Traverse City.” Comments at 1. WPBN therefore requested that the Commission reject the proposed allotment of Channel 50 to Green Bay unless Green Bay 44 can demonstrate “that its proposed operations and antenna orientation differ from those assumed by Hammett & Edison in the Engineering Exhibit [appended to WISC’s Informal Opposition) and that its proposed operations on Channel 50 will cause no impermissible interference to WPBN-DT.” Comments at 2.

Section 1.415 of the Commission’s rules provides that, after a notice of proposed rulemaking is issued, the Commission will afford interested parties a reasonable period of time in which to file comments and reply comments. Section 1.415(d) expressly states that “[n]o additional comments may be filed unless specifically requested or authorized by the Commission.” 47 C.F.R. §1.415(d). As stated above, WPBN’s Comments were filed long after the comment period in this proceeding closed. Thus, WPBN’s Comments constitute an unauthorized pleading which should be summarily dismissed. Moreover, WPBN failed to offer any explanation for why it waited over six (6) weeks after the comment deadline to challenge the proposed allotment of Channel 50 to Green Bay, or why it could not have filed its Comments during the comment period. In addition, WPBN’s unauthorized pleading is not accompanied by any motion for leave to accept its untimely filing, nor did WPBN make any effort to establish good cause for its late filing.

As demonstrated in Green Bay 44’s recent reply to WISC’s Informal Opposition, the Commission’s acceptance of unauthorized pleadings would have a significant adverse effect on its decision-making processes because the acceptance of pleadings filed long after the close of a comment period would result in prolonged delays, prejudice other parties,

and place an unnecessary burden on the Commission's staff. Indeed, despite having constructive notice of the *NPRM* and, thus, the comment and reply comment deadlines in this proceeding, WPBN seeks to have its comments considered in connection with WISC's unauthorized pleading. Consideration of WPBN's unauthorized and grossly untimely pleading would, *inter alia*, (i) cause an unwarranted delay in the resolution of this proceeding and thereby delay the commencement of a new television service in Green Bay and the surrounding area; (ii) prejudice Green Bay 44, which has complied with the Commission's procedural rules; and (iii) burden the Commission's staff by forcing it to review and dispose of WPBN's grossly untimely pleading.

It is well established that strict enforcement of the Commission's procedural rules is necessary in order to avoid prolonged delays in the Commission's administrative processes and promote administrative finality.² The Commission should not accept unauthorized pleadings – especially those like WPBN's – which (i) could have been filed in a timely manner, (ii) are not accompanied by a motion for leave to accept despite their untimeliness, and (iii) no effort is made to establish good cause for their late filing. Therefore, pursuant to Section 1.415(d) of the Commission's rules, WPBN's unauthorized pleading should be summarily dismissed.

II. The Proposed Allotment Will Not Cause Interference to WPBN-DT.

As stated above, WPBN's Comments express concern that the proposed allotment of Channel 50 to Green Bay may cause impermissible interference to WPBN's co-channel DTV facility at Traverse City. Comments at 1-2. However, as demonstrated in

² See *Amendment of the Commission's Rules Regarding the 37.0 – 38.6 GHz and 38.6 – 40.0 GHz Bands; Implementation of Section 309(j) of the Communications Act – Competitive Bidding, 37.0 – 38.6 GHz and 38.6 – 40.0 GHz Bands*, 15 FCC Rcd 10579, 10580 (2000); *Valley Telecasting Co. v. FCC*, 336 F.2d 914, 917 (1964).

the attached engineering statement,³ if the proposed Green Bay station were to operate with 2000 kW ERP and an antenna radiation center of 573 meters above mean sea level, the proposed allotment of Channel 50 would cause 0.09% and 0.08% interference to the allotment and construction permit facilities of WPBN-DT, respectively, both of which are well below the Commission's 0.5% rounding tolerance. Therefore, even if WPBN's Comments were to be considered on their merits, the proposed allotment of Channel 50 to Green Bay would not cause impermissible interference to Station WPBN-DT.

III. Conclusion.

As demonstrated herein, WPBN's grossly untimely Comments constitute an unauthorized pleading filed in violation of Section 1.415(d) of the Commission's rules. Moreover, WPBN's untimely filing is not accompanied by any motion to accept and is woefully void of any good cause showing. Therefore, because strict enforcement of the Commission's procedural rules is necessary to avoid endless delays in the agency's decision-making process and to promote administrative finality, WPBN's Comments should be summarily dismissed.

Even assuming, *arguendo*, that WPBN's unauthorized pleading is considered on its merits, the proposed allotment of Channel 50 to Green Bay will not cause prohibited interference to Station WPBN-DT, Channel 50, Traverse City.

³ Attached hereto is a copy of an engineering statement by Pete Myrl Warren, III, which previously was filed with the Commission on March 7, 2002, in support of Green Bay 44's reply to WISC's Informal Opposition.


WHEREFORE, in light of the foregoing, Green Bay 44, L.L.C. respectfully requests that the Commission dismiss WPBN's unauthorized pleading, adopt the allotment proposal set forth in the *NPRM*, and amend the NTSC Table of Allotments by substituting Channel 50 for the existing Channel 44 allotment at Green Bay, Wisconsin.

Respectfully submitted,

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Attorneys for

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By: 
Andrew S. Kersting

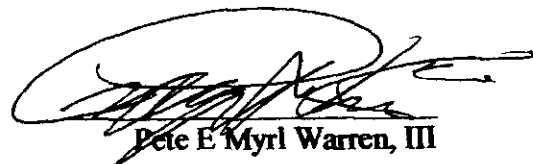
March 14, 2002

WES Broadcast Consultants.

DECLARATION

I, Pete E Myrl Warren, III, declare and state that I am a Certified Broadcast Engineer, by the National Association of Radio and Television Engineers, and my qualifications are a matter of record with the Federal Communications Commission, and that I am an engineer in the firm of WES Broadcast Consultants and that the firm has been retained to prepare an engineering statement on behalf of Green Bay 44 LLC.

All facts contained herein are true to my knowledge except where stated to be on information or belief, and as to those facts, I believe them to be true. All Exhibits were prepared by me or under my supervision. I declare under penalty of perjury that the foregoing is true and correct.



Pete E Myrl Warren, III

Executed on the 6th day of March 2002

**Engineering Statement
Green Bay, Wisconsin
Channel 50+
Proposed Rulemaking
By WES Broadcast Consultants**

This engineering statement is provided in support of a pending rulemaking petition seeking the allotment of Channel 50+ at Green Bay, Wisconsin.

In an effort to ensure that the proposed allotment of Channel 50+ at Green Bay provides adequate protection to Station WISC-DT, Channel 50, Madison, Wisconsin, Green Bay 44, L.L.C. proposes to reduce the ERP of the proposed Channel 50+ NTSC facility at Green Bay by 3 dB. The petitioner also proposes to modify its original directional antenna pattern and utilize a C pattern (reflected in Exhibit ANT-1 hereto) which has been positioned to provide maximized protection to WISC-DT.

WISC-DT's Maximized Facility. The attached Exhibit FLR-1 contains an OET 69 study concerning WISC-DT's maximized facility. This study is based on a 1990 Census population of 1,435,588 persons. This population figure includes 120,586 persons who were not included in the Commission's rounded baseline population of 1,315,000, which is contained in the 1997 DTV Table of Allotments. These additional persons therefore fall outside WISC-DT's original allotment. Using this population data, the proposed Channel 50+ NTSC facility would cause 0.46% interference to WISC-DT's maximized facility, which is within the 0.5% rounding tolerance.

WISC-DT's Allotment. The attached Exhibit FLR-2 contains an OET 69 study with respect to WISC-DT's protected allotment. This study is based on a 1990 Census population of 1,319,671 persons, which includes 4,671 persons who fall outside the Commission's rounded 1997 baseline population. Based on this population figure, the proposed Channel 50+ NTSC facility would cause 0.01% interference to WISC-DT's allotment.

WISC-DT's Maximized Facility Using Baseline Population. In the event the Commission were to require the proposed Channel 50+ NTSC facility at Green Bay to protect WISC-DT's maximized facility using the Commission's rounded baseline population, the proposed Channel 50+ allotment could protect WISC-DT utilizing the C directional antenna pattern referenced above, but with a lowered ERP of 801.733 kW. As demonstrated in the attached Exhibit FLR-3, the proposed Channel 50+ facility would cause 0.5% interference to WISC-DT's maximized facility, which is within the rounding tolerance. As demonstrated in the attached Exhibit LR-1, if the proposed Channel 50+ NTSC facility were to operate with the lowered ERP, it still would provide an 80 dBu signal over the entire community of Green Bay and the immediately surrounding area.

WPBN-DT. As demonstrated in the attached Exhibits FLR-4a and FLR-4b, the proposed allotment of Channel 50+ at Green Bay will cause 0.09% and 0.08% interference to the allotment and construction permit facilities, respectively, of Station WPBN-DT, Channel 50, Traverse City, Michigan.

Technical Facilities of Proposed Allotment. In light of the allegations which have been raised concerning the technical facilities of the proposed Channel 50+ NTSC facility at Green Bay, annexed hereto is a list of television stations licensed to communities in the state of Wisconsin which operate with technical facilities comparable to those of the proposed Channel 50+ allotment.

Technical Facilities of Various Television Stations
Licensed to Communities in Wisconsin

<u>Station</u>	<u>ERP (kW)</u>	<u>RCAMSL (meters)</u>
WXOW-TV, Ch. 19, La Crosse	631	615
WQOW-TV, Ch. 18, Eau Claire	912	558
WHA-TV, Ch. 21, Madison	1,120	754
WPNE, Ch. 38, Green Bay	1,070	585
WIWB, Ch. 14, Suring	1,000	442
WVCY-TV, Ch. 30, Milwaukee	1,070	502
WMTV, Ch. 15, Madison	955	650
WHRM-TV, Ch. 20, Wausua	1,380	755
WACY, Ch. 32, Appleton	1,050	587

Average ERP = 1,021 kW

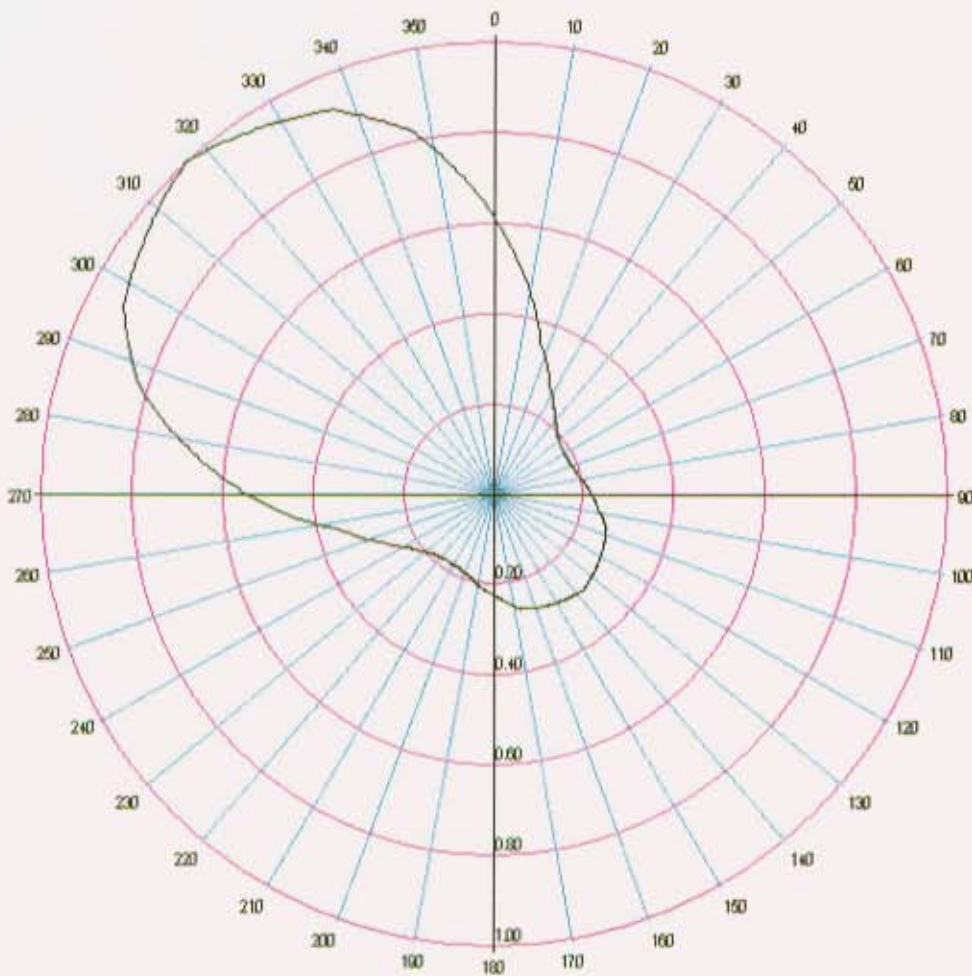
Average RCAMSL = 605.33 meters

Proposed Channel 50 NTSC Facility at Green Bay (assuming lowered ERP):

ERP = 802 kW (rounded)

RCAMSL = 573 meters

Exhibit ANT-1 Green Bay, WI Ch 50 Proposed Rulemaking
by WES Broadcast Consultants



Azim	RelFS	ERP [kW]	dBk	Azim	RelFS	ERP [kW]	dBk	Azim	RelFS	ERP [kW]	dBk	Azim	RelFS	ERP [kW]	dBk
0.0	0.612	375.433	25.745	90.0	0.216	46.767	16.699	180.0	0.224	50.295	17.015	270.0	0.548	301.017	24.786
5.0	0.532	283.696	24.529	95.0	0.226	51.197	17.092	185.0	0.214	45.905	16.619	275.0	0.628	395.320	25.966
10.0	0.455	207.517	23.171	100.0	0.239	57.257	17.578	190.0	0.204	41.715	16.203	280.0	0.708	502.454	27.011
15.0	0.380	144.743	21.606	105.0	0.254	64.669	18.107	195.0	0.194	37.725	15.766	285.0	0.788	622.418	27.941
20.0	0.326	106.528	20.275	110.0	0.263	69.333	18.409	200.0	0.187	35.052	15.447	290.0	0.850	724.216	28.599
25.0	0.286	81.990	19.138	115.0	0.268	71.995	18.573	205.0	0.182	33.203	15.212	295.0	0.900	811.923	29.095
30.0	0.255	65.179	18.141	120.0	0.273	74.706	18.734	210.0	0.180	32.477	15.116	300.0	0.932	870.687	29.399
35.0	0.230	53.026	17.245	125.0	0.278	77.468	18.891	215.0	0.180	32.477	15.116	305.0	0.952	908.456	29.583
40.0	0.211	44.627	16.496	130.0	0.283	80.279	19.046	220.0	0.183	33.569	15.259	310.0	0.972	947.027	29.764
45.0	0.196	38.507	15.855	135.0	0.288	83.141	19.198	225.0	0.188	35.428	15.493	315.0	0.992	986.401	29.941
50.0	0.187	35.052	15.447	140.0	0.287	82.565	19.168	230.0	0.199	39.695	15.987	320.0	0.988	978.462	29.905
55.0	0.182	33.203	15.212	145.0	0.282	79.713	19.015	235.0	0.214	45.905	16.619	325.0	0.968	939.249	29.728
60.0	0.180	32.477	15.116	150.0	0.277	76.911	18.860	240.0	0.235	55.356	17.432	330.0	0.948	900.838	29.546
65.0	0.180	32.477	15.116	155.0	0.272	74.160	18.702	245.0	0.260	67.761	18.310	335.0	0.928	863.229	29.361
70.0	0.183	33.569	15.259	160.0	0.267	71.458	18.541	250.0	0.294	86.641	19.377	340.0	0.890	793.981	28.998
75.0	0.188	35.428	15.493	165.0	0.262	68.807	18.376	255.0	0.334	111.821	20.485	345.0	0.840	707.275	28.496
80.0	0.196	38.507	15.855	170.0	0.251	63.151	18.004	260.0	0.395	156.395	21.942	350.0	0.772	597.399	27.763
85.0	0.206	42.537	16.288	175.0	0.236	55.828	17.469	265.0	0.470	221.425	23.452	355.0	0.692	480.001	26.812

Exhibit FLR-1
Proposed Rulemaking
Greenbay, WI Ch 50
prepared by Wes, Inc. Broadcast Consultants

Ch 50 N LAT 44-30-48 W LON 88-00-24 ERP: 1002.374 kW AGL:391m GMSL:182m RCMSL:573m

Callign	City	Class	Status	ERP	Sep Type	Status	Dist	Prot	Clearance	D/U	Rx Gain	Rx F/B	Zone	Band	Ch#	Adj	Matrix	Svc Contour	Svc Strength
WISC-DT	MADISON	DTV	CP	603	D/M	Clean	203	194	9.2	2	10	14	1	UHF	50	Co	LR	F(50,90)	41

Population before the additon of Ch 50 to the database not affected by terrain losses:1,435,588 persons

Population lost to NTSC before the additon of Ch 50: 61,510 persons

Population after the loss to NTSC: 1,374,078 persons

Population after the addition of Ch 50 to the database: 1,367,332 persons

Population lost to NTSC with Ch 50: 6,746 persons

Percentage of population lost with Ch 50: 0.46 %

Exhibit FLR-2
Proposed Rulemaking
Greenbay, WI Ch 50
prepared by Wes, Inc. Broadcast Consultants

Ch 50 N LAT 44-30-48 W LON 88-00-24 ERP: 1002.374 kW AGL:391m GMSL:182m RCMSL:573m

Call sign	City	Class	Status	ERP	Sep Type	Status	Dist	Prot	Clearance	D/U	Rx Gain	Rx F/B	Zone	Band	Ch#	Adj	Matrix	Svc Contour	Svc Strength
WISC-TV*	MADISON	DTV	LIC	380	D/M	Clean	203	194	9.2	2	10	14	1	UHF	50	Co	LR	F(50,90)	41

Population before the addition of Ch 50 to the database not affected by terrain losses: 1,319,671 persons

Population lost to NTSC before the addition of Ch 50: 34,622 persons

Population after the loss to NTSC: 1,285,049 persons

Population after the addition of Ch 50 to the database: 1,284,871 persons

Population lost to NTSC with Ch 50: 178 persons

Percentage of population lost with Ch 50: 0.01 %

Exhibit FLR-3
Proposed Rulemaking
Greenbay, WI Ch 50
prepared by Wes, Inc. Broadcast Consultants

Ch 50 N LAT 44-30-48 W LON 88-00-24 ERP: 801.733 kW AGL:391m GMSL:182m RCMSL:573m

Call Sign	City	Class	Status	ERP	Sep Type	Status	Dist	Prot	Clearance	D/U	Rx Gain	Rx F/B	Zone	Band	Ch#	Adj	Matrix	Svc Contour	Svc Strength
WISC-DT	MADISON	DTV	CP	603	D/M	Clean	203	194	9.2	2	10	14	1	UHF	50	Co	LR	F(50,90)	41

Population before the addition of Ch 50 to the database not affected by terrain losses: 1,315,000 persons

Population lost to NTSC before the addition of Ch 50: 0 persons

Population after the loss to NTSC: 1,374,078 persons

Population after the addition of Ch 50 to the database: 1,367,482 persons

Population lost to NTSC with Ch 50: 6,596 persons

Percentage of population lost with Ch 50: 0.50 %

Exhibit FLR-4a
Greenbay, WI Ch 50
Amendment to Pending Rulemaking
prepared by Wes, Inc. Broadcast Consultants

Ch 50 N LAT 44-30-48 W LON 88-00-24 ERP: 2000 kW AGL:391m GMSL:182m RCMSL:573m

Callsign	City	Class	Status	ERP	Sep Type	Status	Dist	Prot	Clearance	D/U	Rx Gain	Rx F/B	Zone	Band	Ch#	Adj	Matrix	Svc Contour	Svc Strength
WPBN-TV*	TRAVERSE	DTV	Allotm	1000	D/M	Clean	184	194	-9.9	2	10	14	2 UHF	50	Co	LR	F(50,90)		41

Population before the addition of Ch 50 to the database not affected by terrain losses:	403,051 persons
Population lost to NTSC before the addition of Ch 50:	1,660 persons
Population after the loss to NTSC:	401,391 persons
Population after the addition of Ch 50 to the database:	401,009 persons
Population lost to NTSC with Ch 50:	382 persons
Percentage of population lost with Ch 50:	0.09 %

Exhibit FLR-4b
Greenbay, WI Ch 50
Amendment to Pending Rulemaking
prepared by Wes, Inc. Broadcast Consultants

Ch 50 N LAT 44-30-48 W LON 88-00-24 ERP: 2000 kW AGL:391m GMSL:182m RCMSL:573m

Callsign	City	Class	Status	ERP	Sep Type	Status	Dist	Prot	Clearance	D/U	Rx Gain	Rx F/B	Zone	Band	Ch#	Adj	Matrix	Svc Contour	Svc Strength
WPBN-DT	TRAVERSE	CDTV	CP	1000	D/M	Clean	184	194	-9.9	2	10	14	2 UHF	50	Co	LR	F(50,90)		41

Population before the addition of Ch 50 to the database not affected by terrain losses:	389,243 persons
Population lost to NTSC before the addition of Ch 50:	1,130 persons
Population after the loss to NTSC:	388,113 persons
Population after the addition of Ch 50 to the database:	387,803 persons
Population lost to NTSC with Ch 50:	310 persons
Percentage of population lost with Ch 50:	0.08 %

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of March, 2002, a copy of the foregoing "Reply to Comments in Support of Informal Opposition" was mailed first-class, postage prepaid, to the following:

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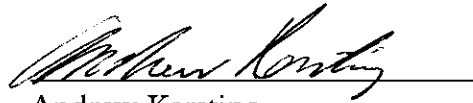
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